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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,975	03/19/2004	Daniel Danker	MS1-1897US	7865
22801	7590	07/09/2008		
LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201			EXAMINER STRONCZER, RYAN S	
			ART UNIT	PAPER NUMBER
			2623	
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			07/09/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/804,975

Applicant(s)

DANKER, DANIEL

Examiner

Ryan Stronczer

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 2, 6, 11, 17, 20 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, 7-10, 12-16, 18, 19 and 21-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Applicant's amendments filed 31 March 2008, with respect to claims 12 and 21-24 have been fully considered. The rejections of claims 12 and 21-24 under 35 U.S.C. 112 and claims 22-24 under 35 U.S.C. 101 have been withdrawn.

Response to Arguments

Applicant's arguments with respect to claims 1-28 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4, and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitations "the plurality of data types comprising...system parameters" and "pausing the custom program guide in response to the user input" in the last line of the claim. There is insufficient antecedent basis for these limitations in the claim. As to the recited "pausing," it is unclear from the claim language what effect the recited "pausing" would have on the program guide since applicant has deleted the

limitation of a scrolling program guide from the claim. As to the recited system parameters, applicant's specification states that "other" parameters may be used in addition to the recited data types [0038], but neither the specification nor the claim language indicates how the system parameters themselves would affect the customization of the program guide. Furthermore, claim 1 recites that the information contained in the recited data types are unique the individual user, whereas system parameters would seem to be universal device information which is not linked to individual users.

Claims 4 and 5 recite "...wherein receiving a request to display a program guide is generated in response to tuning the client device to a [virtual] channel." This suggests that tuning the client device to the recited channel causes said request to display the program guide to be generated; however, it would seem that the act of tuning the device to the recited channel is itself an implicit request to display the program guide. For the purposes of applying prior art in this Office Action, Examiner will consider the act of tuning the client device to a channel to be a request to display the program guide.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 7, 9, 10, 12, and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maissel et al. (US Pat. No.: 6,637,029) and further in view of McKenna (Pub. No.: US 2004/0003402).

As to claims 1, 25, and 27 Maissel teaches a system for customizing an electronic program guide (EPG) comprising:

a receiving unit for receiving the program schedule information from the television network, a profile storage unit for storing at least one viewer preference profile of at least one television viewer, an intelligent agent for customizing the program schedule information based, at least in part, on the viewer preference profile, to produce a program guide including customized program schedule information, and display apparatus for displaying the program guide. (col. 3, lines 14-22)

As to the recited data types, Maissel teaches that the user preference profile is based on the viewing behavior monitored by the intelligent agent (col. 12, lines 16-30) but that the user can also edit his profile by *"adding, deleting, or modifying information...on programs or types of programs which the viewer prefers to view or not to view"* (col. 12, lines 56-59).

While Maissel teaches that *"...other types of data processing and analysis may occur at the headend...typically being directed to provide additional programming information to viewers"* (col. 19, lines 16-19), Maissel does not explicitly teach that said additional information is directly related to the user profile or recited data types as recited in claims 1 and 27. McKenna teaches an analogous system for an EPG including a ticker which is customized based on a user profile. McKenna teaches that *"the viewer profile information can be used to present targeted advertisements via the ticker although it is appreciated that content of a non-commercial nature (such as sports*

scores) can also be presented to the viewer" [0024]. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the profile generation and EPG customization taught by Maissel with the targeted advertisements and other information taught by McKenna to provide users of Maissel's EPG with a wide range of additional information they would be interested in based on the profile data collected by Maissel's intelligent agent.

The set top box recited by 25 is taught by Fig. 1, 8A-B, and 10A of Maissel.

As to claims 3 and 28, Maissel teaches, "[i]t is appreciated that the display information may be displayed...on demand by a user, typically expressed by pressing a designated button on a remote control unit (not shown) as is well known in the art" (col. 19, lines 43-49).

As to generating the program guide in response to tuning to channel as recited in claims 4 and 5, Maissel teaches that the user may "[customize] a channel to contain selected programs from the program guide, typically by creating a virtual channel...to give a viewer the appearance that the viewer's preferred programs are all broadcast on the customized channel" (col. 14, lines 10-16).

As to claim 7, paragraph 0024 (cited above) of McKenna explicitly teaches that the additional information can be a targeted advertisement.

As to claim 9, Maissel teaches that the client device receives information including a description of the program as well as a cast listing and the name of the director (col. 11) which is consistent with the recited background information.

As to claim 10, Maissel teaches that the user profile “...*may comprise a simple data structure describing current program characteristics of programs viewed by a viewer and other information as stated above. It is appreciated, however, that the viewer preference profile may...take a wide variety of forms*” (col. 13, lines 9-13). This data structure is consistent with the recited configuration file.

As to claim 12, the recited memories and computer program are inherent in the system taught by Maissel.

As to claim 26, McKenna teaches that the additional information, such as sports scores, “...*can be stored in the storage medium and retrieved during the appropriate times during the course of the scrolling of the ticker. The ticker data stored in the storage medium 322 can be replaced as updates are received*” [0054], but does not explicitly teach that the program schedule information can be stored in the storage medium. Examiner takes Official Notice that it is well-known in the art for a client device to store program schedule information and that it would have been within the scope of the teachings of Maissel and McKenna to do so to shorten response time when the user requests that the EPG be displayed.

Claims 13-15 and 18, 19, and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maissel and McKenna as applied to claim 1 above, and further in view of Knudson et al. (US Patent 6,536,041).

Re claims 13, 22, and 24, the rejection of claim 1 is incorporated herein. As to the limitation that the set top box generate a scrolling custom program guide and that

the user can change the format from scrolling to interactive, Maissel and McKenna teach an interactive, scrollable EPG, but do not explicitly teach that the EPG scrolls automatically, as recited. Knudson teaches an EPG in which in which:

...the user presses a remote control play key or other suitable button (e.g., to activate an on-screen menu selection), the program guide displays an automatically scrolling controllable ticker at step 282...When the user presses a remote control key such as a cursor or stop key, the program guide stops the scrolling motion of the ticker and displays a corresponding stationary controllable ticker at step 284. (col. 15, lines 33-42).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the customized EPG taught by Maissel and McKenna with the scrolling functionality taught by Knudson to allow users greater control over how the EPG is displayed.

As to the limitation recited in claim 22 that the program guide include a schedule portion and a selected promotional portion, it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the generic advertisement taught by Fig. 24 of Knudson with one of the targeted advertisements taught by McKenna to allow advertisers greater return on their investment.

The computer readable media and processors recited in claims 22 and 24 are inherent in the systems taught by Maissel, McKenna, and Knudson.

As to claim 23, the recited memories and processors are inherent in the systems taught by Maissel and Knudson.

As to claim 14, Knudson teaches, *"If desired, the scrolling action of the controllable ticker may be resumed after a predetermined amount of time elapses (e.g., 15 seconds) or after the user presses play"* (col. 15, lines 48-50).

As to claim 15, paragraph 0024 of McKenna (cited above) teaches that the user profile information can be used to deliver targeted advertisements to the user. As to the limitation that said advertisement is "selected from a plurality of advertisements" it is inherent in the system taught by McKenna that the advertisements are selected by the head end and not generated autonomously by the STB, which would imply that the targeted advertisements are selected from some larger cache of potential advertisements.

As to claim 18, the recited customized first portion would be consistent with the EPG using the user profile to select, for example, certain channels to display to the user, whereas the actual program schedules for those selected channels would be consistent with the "uncustomized" second portion.

Claim 19 is rejected by Maissel and McKenna as applied to claim 18. The limitation regarding "selected additional information," is taught by McKenna as applied to claim 1 above.

As to claim 21, the recited memories and computer program are inherent in the systems taught by Maissel and McKenna.

Claims 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maissel and McKenna as applied to claims 1 and 13 above, and further in view of Novak et al. (Pub. No.: US 2006/0117343).

As to the recited video-on-demand (VOD) promotion, Maissel and McKenna teach that the system can deliver targeted advertisements based on the user profile

data, but do not explicitly teach that said advertisements can be a VOD promotion. Novak teaches an analogous advertising system in which, “[s]tored user-preference data may be used to target video advertisements to the user, via correlation of the user-preference data with video clips available from channels, a VOD server...” [0130]. It would have been obvious to one of ordinary skill in the art to combine the user preference and targeted advertising functionality taught by Maisse and McKenna with the targeted VOD advertisements taught by Novak to allow the system of Maisse and McKenna to promote VOD to its users and thus increase advertising revenue.

As to the limitation that the video preview is “selected from a plurality of video previews” recited in claim 16, it is inherent in the system taught by Novak that the video previews are selected by the head end which would imply that the targeted advertisements are selected from some larger cache of potential video previews.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Stronczer whose telephone number is (571) 270-3756. The examiner can normally be reached on 7:30 AM - 5:00 PM (EDT), Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian T. Pendleton can be reached on (571) 272-7527. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 2623

/Ryan Stronczer/

Examiner, Art Unit 2623

/Brian T. Pendleton/

Supervisory Patent Examiner, Art Unit 2623